

QUICK REFERENCE GUIDE TO

HEALTH AND SAFETY AT WORK



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1.1. WHAT IS A PERSON CONDUCTING BUSINESS OR UNDERTAKING (PCBU)?

- A PCBU usually refers to a business entity, such as a company.
- A person may be a PCBU if they are a sole trader or a self-employed person.
- A business is an enterprise usually conducted with the view of making a profit and having a degree of organisation.
- An undertaking may have some degree of organisation, system and continuity, but is usually not profit-making or commercial in nature.

Examples include:

- Businesses, large and small
- A government department or Crown agency
- A local council
- A school
- A not-for-profit organisation employing paid staff
- A self-employed person running their own business.

1.2. WHAT IS NOT A PCBU?

- A person who is employed or engaged solely as a Worker (see Element 2) or an Officer (see Element 4) of the business or undertaking.
- A home occupier where they engage or employ someone solely to do residential work in their home.
- A volunteer association is a group of volunteers working together for one or more purposes, and who does not employ anyone to carry out work for the association.

1.3. WHY PCBUs?

- PCBUs are in the best position to control risks to workplace health and safety as they are the ones carrying out the business or undertaking.
- PCBUs have the primary duty of care to ensure the health and safety of workers, and others affected by the work carried out by the PCBU.
- The PCBU concept recognises that a business or undertaking has an influence over the health and safety of workers, even where those workers may not be its direct employees.

1.4. OVERLAPPING DUTIES BETWEEN PCBUS

- Where there is overlap, and more than one PCBU has a duty in relation to the same matter, PCBUS need to consult, co-operate and co-ordinate activities to meet shared responsibility in regard to the health and safety of their workers, so far as is reasonably practicable.
- PCBUS with overlapping duties are not required to duplicate efforts, but, will need to work together to meet their duty of care (see Element 3). PCBUS cannot contract out of their duty. However, they can make reasonable arrangements with the other PCBUS to fulfil their duty.
- PCBUS should monitor each other to ensure everyone is doing what they agreed.
- The extent of a PCBU's duty depends on the level of influence and control the PCBU has over matters at work.



2.1. WHAT IS THE MEANING OF WORKERS?

- **Workers are:**
 - Employees, contractors or sub-contractors
 - Employees of contractors or sub-contractors
 - Employees of labour hire companies
 - Outworkers (including homeworkers)
 - Apprentices, trainees, people gaining work experience
 - Volunteer workers
- Volunteers working for voluntary organisations and officers (company directors) are not workers.
- Workers have responsibilities but not primary duty of care.

2.2. WHAT ARE WORKERS DUTIES?

- Workers must take reasonable care to ensure the health and safety of themselves and others in the workplace.
- Workers must follow any reasonable instruction from the PCBU that allows the PCBU to comply with the Act.
- Workers must co-operate with any reasonable policy or procedure of the PCBU relating to health and safety in the workplace.
- Workers have the right to refuse to undertake dangerous work.

3.1. PRIMARY DUTY OF CARE

The Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace.

PCBUs must as far as is reasonably practicable, ensure the health and safety of:

- workers, including their subcontractors and their workers, working in their business or undertaking
- workers whose work activities are influenced or directed (impacted) by the PCBU
- other people who could be put at risk by the work the business or undertaking does.

So far as reasonably practicable PCBUs must:

- provide and maintain a work environment that is without workplace risks
- provide and maintain safe plant and structures
- provide and maintain safe systems at work

- ensure the safe use, handling and storage of plant, substances and structure
- provide adequate facilities for the welfare of their workers
- provide information, training, instruction or supervision that is needed to protect all people from health and safety risks arising from their work
- monitor the health of their workers and workplace conditions to prevent illness or injury.

3.2. “SO FAR AS IS REASONABLY PRACTICABLE”

‘Reasonably practicable’ is a very important concept. It involves doing what is reasonably able to be done to ensure health and safety. That involves taking into account and weighing up certain matters such as the likelihood of a hazard or risk occurring, the harm that would result, what you know about the hazard or risk, how it can be managed, and the costs associated with this.

3.3. DUTY TO ELIMINATE OR MINIMISE RISK

PCBUs need to keep workers and others in the workplace safe by eliminating or minimising risks that may arise from their work so far as is reasonably practicable.

3.4. PCBU's DUTY TO WORK WITH OTHER PCBUs TO MANAGE HEALTH AND SAFETY

PCBUs must consult, co-operate and co-ordinate activities with other PCBUs to meet shared duties and responsibilities in regard to the health and safety of their workers.

3.5. PCBU's DUTY TO WORK WITH WORKERS TO MANAGE HEALTH AND SAFETY

PCBUs have a duty to **engage** with workers about health and safety, and provide workers reasonable opportunities to **participate in improving** work health and safety.



ELEMENT 04/ OFFICERS AND DUE DILIGENCE

4.1. WHO IS AN OFFICER?

The role of officers is to exercise due diligence to ensure that the PCBU meets its health and safety obligations. This is a more proactive duty than under the previous law.

Any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example the Chief Executive).

A person who merely advises or makes recommendations to a person in a senior position is not considered an officer.

4.2. WHO HAS THE DUTY OF DUE DILIGENCE?

The difference between a PCBU and an Officer's duty is that officers do not have to ensure the health and safety of the workers of the PCBU. Rather, an officer must exercise due diligence to ensure the PCBU is meeting its health and safety obligations.

Officers such as Councillors, voluntary directors, and elected local, school or community board members still have the duty of due diligence, however they are exempt from prosecution.

4.3. WHAT IS DUE DILIGENCE?

Due Diligence includes taking reasonable steps:

- (a)** to acquire, and keep up-to-date, knowledge of work health and safety matters; and
- (b)** to gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and
- (c)** to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d)** to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- (e)** to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- (f)** to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

ELEMENT 05/ DUTIES OF OTHER PERSONS

5.1. WHO ARE OTHER PERSONS?

Other persons at a workplace include volunteers (other than volunteer workers), visitors, eg courier delivery persons coming onto the company premises, customers at a shopping mall and children at a school.

5.2. WHAT ARE THE DUTIES OF OTHER PERSONS?

Other persons at a workplace must:

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- comply so far as they are reasonably able, with any reasonable instruction that is given to them by the PCBU, to allow the PCBU to comply with the law.

The expansion of health and safety duties to workers and other persons ensures that every participant has a statutory duty; supporting the idea that health and safety is the responsibility of everyone.

6.1. SPECIFIC DUTIES

In addition to their primary duty, there are now specific duties on PCBUs who are upstream in the supply chain.

Upstream PCBUs include designers, for example architects or engineers, and manufacturers, suppliers, installers or importers of plant, substances, or structures.

6.2. PRIMARY DUTY

Upstream PCBUs have a primary duty to ensure, so far as is reasonably practicable, that the work they do or the things they provide to the workplace don't create health and safety risks.

6.3. PROVISIONS

The provisions on upstream activities are not new. Similar obligations currently exist in the 1995 Regulations (Sections 66 – 69). The change is that these obligations are now elevated to the Act.

ELEMENT 07/

ENGAGEMENT, WORKER PARTICIPATION AND REPRESENTATION

7.1. EFFECTIVE WORKER PARTICIPATION

All PCBU's will be required to have effective worker participation practices that are appropriate to the workplace.

Worker participation practices must provide workers with reasonable opportunities to participate effectively in improving health and safety on an ongoing basis.

These practices may include but are not limited to, having health and safety representatives and/or health and safety committees.

7.2. DUTY TO ENGAGE

PCBU's have requirements to ensure that they engage with workers in a meaningful way on health and safety matters. If the workers are represented by a health and safety representative (HSR), the engagement must involve that representative.

7.3. HEALTH AND SAFETY REPRESENTATION

A worker can request a HSR be elected to represent workers, or a PCBU can initiate the election of HSRs. The Act has special provisions for HSRs in small and low risk businesses. The number of HSRs is determined by PCBUs, workers and their representatives who agree on the composition of the workgroup.

Trained HSRs can issue Provisional Improvement Notices (PIN). These are notices given to a person and require that person to remedy a breach or a possible breach against the Act or Regulations, within a certain period of time.

The affected person may ask the regulator to appoint an inspector to review the notice within 7 days after it is issued. An inspector may confirm, change or cancel the notice. A trained HSR may also direct unsafe work to cease.

7.4. THE ROLE OF THE REGULATOR AND THE ROLE OF THE INSPECTOR IN TERMS OF WORKER PARTICIPATION

If a dispute about work health and safety arises at a workplace, the parties to the issue (usually PCBUs, workers and HSRs) must make a reasonable effort to resolve the issue. If the parties cannot decide the matter between themselves, any party may ask the regulator to appoint an inspector to assist them in resolving the matter. The regulator may appoint an inspector to help resolve the issue if previous efforts were unsuccessful.

ELEMENT 08/ NOTIFICATIONS AND NEAR MISSES

8.1. NOTIFICATION AND NOTIFIABLE EVENTS

A PCBU must immediately, after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified of the event.

Notification may be given by telephone or in writing (including by fax, email, or other electronic means) and must be given by the fastest possible means in the circumstances.

Notifiable event means:

- the death of a person
- a notifiable injury or illness, or
- a notifiable incident.

8.2. NOTIFIABLE INJURY OR ILLNESS

Notifiable injury or illness means one of the injuries or illnesses listed below, when it requires the person to have immediate treatment (other than first aid):

- the amputation of any part of his or her body
- a serious head injury
- a serious eye injury
- a serious burn

- the separation of his or her skin from an underlying tissue (such as de-gloving or scalping)
- a spinal injury
- the loss of a bodily function, or
- serious lacerations.

8.3. NOTIFIABLE INCIDENT

A notifiable incident means an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to one of 13 categories of events:

- escape, spillage, or a leakage of a substance
- implosion, explosion, or fire
- escape of gas or steam
- escape of a pressurised substance
- electric shock
- fall or release from a height of any plant, substance, or thing
- collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations
- collapse or partial collapse of a structure
- collapse or failure of an excavation or any shoring supporting an excavation

- inrush of water, mud, or gas in workings in an underground excavation or tunnel
- interruption of the main system of ventilation in an underground excavation or tunnel
- collision between 2 vessels, a vessel capsize, or the inrush of water into a vessel
- any other incident prescribed declared by regulations to be a notifiable incident for the purposes of this section.



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